IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

Crl.MC.No. 1877 of 2007()

CC.130/2002 of CHIEF JUDICIAL MAGISTRATE COURT, KOZHIKODE

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PETITIONER:

ZACHARIAH P.S., S/O SKARIA,
AGED 53 YEARS, AT PRESENT EMPLOYED AS
DEPUTY SUPERINTENDENT OF POLICE,
CBCID, KOZHIKODE.

BY ADV. SRI.D.SREEKUMAR

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY THE
DIRECTOR GENERAL OF PROSECUTION,
HIGH COURT OF KERALA, ERNAKULAM.

2. ADDITIONAL DIRECTOR GENERAL OF POLICE,
CRIMES, THIRUVANANTHAPURAM.

3. K.P.ABDUL RASHEED, S/O IBRAHIM,
KONPPURATH HOUSE, SOOPIKKADA,
CHANGAROTH AMSOM, PERUVANNAMOZHI,
KOZHIKODE.

4. E.P.SALEEM, S/O KUNHUMOIDEEN,
EZHUPARAMBIL HOUSE, AVADUKKA, CHANGAROTH,
PERUVANNAMOZHI, KOZHIKODE.

5. THE DIRECTOR GENERAL OF POLICE,
KERALA, THIRUVANANTHAPURAM.

BY SRI.P.G.THAMPI, DIRECTOR GENERAL OF PROSECUTIONS
SRI.ANIL THOMAS(T)
SMT.K.V.RESHMI

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 02/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. M.C. No. 1877 OF 2007

Dated this the 2nd day of August, 2007

O R D E R

In this petition filed under section 482 Cr.P.C., the petitioner who was the charging officer examined as PW11 in C.C.No.130/02 on the file of the CJM Court, Kozhikode, seeks to expunge the adverse remarks made against him in Annexure-15 judgment dated 6.4.06 in the above case.

2. Two persons were charge sheeted in the above case for offences punishable under sections 468, 471 and 511 of 420 read with section 34 IPC. The case of the prosecution is that accused Nos.1 and 2 in that case forged a B.Com degree certificate bearing false registration number allegedly issued by Calicut University and the second accused, a travel agent, submitted the same on 14.1.1999 before the Regional Passport Office, Calicut on behalf of the first accused for getting a seal affixed on the passport of the first accused to the effect that emigration cheque was not required and the accused have thereby committed offences punishable under sections 468, 471 and 511 of 420 read with section 34 IPC.

3. The above case was charge sheeted by the Dy.S.P. of CBCID, Kozhikode. The investigation of the case started on 16.8.1999.

The petitioner herein who was the Dy.S.P., CBCID, Kozhikode, took over the investigation on 24.9.01 and the final report was filed by him on 26.6.02. Eleven witnesses were examined in the case and 12 documents were marked as Exts.P1 to P12. After a prolonged trial, the above case was disposed of on 6.4.06 acquitting the 2nd accused but convicting the first accused of the aforesaid offences. During the course of the judgment, the learned CJM had made the following remarks:-

> "14. As regards the haphazard manner in which the investigation was conducted certain observations become inevitable. The investigation falls short of perfection, is far from satisfactory and cannot be characterized as beyond reproach. The lethargy and indifference on the part of PW11 who conducted the major part of the investigation is writ large throughout and are too manifest to escape notice. The forgery proved can never be the handiwork of an individual but must be that of a racket and what has been detected is in all probability the tip of the iceberg. PW11 who admits that he has hearsay information about such a racket being quite active has never moved his little finger to conduct any investigation in that direction with a view to unearth the racket and identify the persons behind. He has never displayed even the average reason and common sense leave alone the intelligence

> expected of an investigating officer, and the laxity in investigation is liable to be condemned. The authorities concerned shall be cautious before assigning to the said officer the task of investigation of serious crimes and may seriously consider whether he should be debarred from such investigations. However, it may be added that the laches in investigation have never defiled the evidence adduced in support of the allegations against the first accused, whatever lacuna there was being subsequently filled up by the witness and documents summoned by the court."

4. In paragraph 21 of the judgment, the learned CJM observed as follows:-

> " 21. The conduct of PW11, the Deputy Superintendent of Police, who conducted the investigation has been adversely commented on and the matter is considered as serious enough to call for departmental enquiry or action. A copy of the judgment shall be forwarded to the Director General of Police, through the Hon'ble High Court."

After receipt of a copy of the judgment, the petitioner was served with A16 and A18 memo calling for his explanation.

5. It is the case of the petitioner that he has been condemned unheard by the court in the most foul manner. After hearing the learned counsel for the petitioner as well as Sri.P.G.Thampi, learned Director General of Prosecutions, I see much force in the submissions made on behalf of the petitioner. The petitioner was examined in the case as PW11. This is a case in which PW11 came on the scene as an investigation officer only from 24.9.2001. The investigation from 16.8.99 till 24.9.01 was conducted by other officers. That apart, it was relying on the materials collected by the investigating officers including the petitioner herein(PW11) that the court convicted the first accused. The petitioner was admittedly not heard before making those disparaging remarks against him apart from the fact that he does not deserve those remarks. The principle of audi alteram partem was patently violated in the case of the petitioner. Just as a perfect murder is yet to be committed, a fool-proof and perfect investigation is something which can only be imagined and not accomplished. It is common knowledge that investigation of a forgery case is a difficult task for any officer conducting the investigation. Very often, convictions are recorded noticing that there is invariably a beneficiary to the allegedly forged documents. Therefore, by no stretch of imagination can it be concluded that there was laxity of investigation on the part of PW11 so as to justify such a damaging observation. At any rate, before making those observations,

the court below should have given him an opportunity to explain the deficiency/lapses, if any, in the investigation. (See in this connection, the observations in paragraph 107 of the decision of this court in ***Acharuparambil Pradeepan Vs. State of Kerala*** [2005 (3) KLT 1075]). The observations and directions extracted above contained in the judgment of the learned CJM are accordingly expunged and they shall not be considered for the purpose of any disciplinary or other proceedings against the petitioner.

This petition is allowed as above.

(V. RAMKUMAR, JUDGE)

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